

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES M. MANETH and U.S. POSTAL SERVICE,
POST OFFICE, Great Bend, KS

*Docket No. 02-1906; Submitted on the Record;
Issued January 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he has greater than an eight percent permanent impairment of his left upper extremity, for which he received a schedule award.

On February 9, 2001 appellant, a 41-year old letter carrier, filed a claim for benefits, alleging that he developed carpal tunnel syndrome in his left wrist causally related to factors of his employment. The Office accepted the claim for carpal tunnel syndrome, left upper extremity and approved surgery for carpal tunnel release on his left wrist on March 9, 2001. Appellant underwent successful surgery on April 2, 2001.

On June 26, 2001 appellant filed a Form CA-7, claim for a schedule award based on the loss of use of his left upper extremity.

In a report and impairment evaluation dated December 17, 2001, Dr. Robert L. Bassett, a Board-certified orthopedic surgeon, found that appellant had a 20 percent permanent impairment of the left upper extremity. Relying on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition), Dr. Bassett stated:

“[Appellant’s] impairment rating for the objective sensory exam[ination] using Table 16-5 on [p]age 447 of the A.M.A., *Guides*, reveals he has 50 percent impairment of the radial aspect of the digit. Using Figure 16-8 on [p]age 449, gives a 50 percent loss with a 6 percent impairment of the digit which is a 3 percent impairment. His grip strength today measures on the right 105/100/100, compared with the alternate measurements on the left of 65/60/85. This is computed using direction on [p]age 508 and 509, [s]ection 16.8-B, Table 16-34. This correlates with the grip strength on the left compared to the right measuring 60.688, which is a 31 to 60 percent strength loss impairment, which is 20 percent of the upper extremity. Given the magnitude of this loss it would seem that [this] loss incorporates the subjective sensory loss of his hand and the minor objective changes. Based upon his grip strength loss he ends up with a 20 percent impairment of the upper extremity and 12 percent whole body impairment....”

In a memorandum/impairment worksheet dated January 11, 2002, an Office medical adviser stated that Dr. Bassett's calculations of the strength in appellant's left upper extremity at levels of 65, 60 and 85 were inappropriate because these figures exceeded confidence levels as discussed in section 16.8(b), "[g]rip and [p]inch [s]trength." He advised that Dr. Bassett's findings were not appropriate for the additional reason that it was not acceptable under the A.M.A., *Guides*, to use the strength in the opposite upper extremity minus the strength in the affected upper extremity to make the calculations required to consider a strength loss index and that appellant's normal strength must be considered using Tables 16-31 through 16-33. The Office medical adviser suggested that Dr. Bassett submit an addendum report, base his findings on a rating for pain and/or sensory deficit, using Table 16-10 in conjunction with 16-15 to determine entrapment neuropathy.

In a supplemental report dated February 1, 2002, Dr. Bassett submitted a revised impairment rating of an eight percent impairment of the left upper extremity pursuant to the A.M.A., *Guides*. He stated:

"[Appellant] has a complaint of postoperative numbness of his left hand status post carpal tunnel release and flexor tendon tenolysis. He is overall improved since his surgery but has not gotten back to complete normal sensation and function. If we discard the grip strength measurements the only impairment due to his surgery that is measurable would be the loss of two point discrimination. As noted in my previous letter, using the A.M.A., *Guides* and referring to Table 16-11, in conjunction with Table 16-15 for strength testing and using Tables 16-10 and 16-15 for the sensory testing as suggested in conjunction with Table 16-31, 16-32 and 16-33, there is no measurable grip strength that can be measured and weighed given [appellant's] high measurements of grip strength on his operated hand. With regard to the sensory loss, using Table 16-10 and Table 15, [appellant] has with his distorted superficial tactile sensibility he has functionally a 20 percent deficit. Multiplying that by the 39 percent for the median nerve, based upon Table 15, this multiplies out to a 7.8 deficit which rounds up to an 8 percent impairment."

In a memorandum/impairment worksheet dated April 15, 2002, the Office medical adviser adopted Dr. Bassett's finding of an eight percent permanent impairment of the left upper extremity pursuant to the A.M.A., *Guides*.

By decision dated June 28, 2002, the Office granted appellant a schedule award for an eight percent permanent impairment of the left upper extremity for the period December 17, 2001 to June 9, 2002 for a total of 24.96 weeks of compensation.

The Board finds that appellant has no more than an eight percent permanent impairment for loss of use of the left upper extremity, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss or loss of use of, the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of

¹ 5 U.S.C. §§ 8101-8193, *see* 5 U.S.C. § 8107(c).

compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

In this case, the Office determined that appellant had an 8 percent permanent impairment based on the findings of Dr. Bassett that appellant had a 20 percent loss based on pain and sensory deficit, which, when multiplied by the 39 percent loss of the median nerve pursuant to Table 15, totaled a 7.8 impairment. Dr. Bassett then rounded off this figure to arrive at an eight percent impairment of appellant's left upper extremity. Relying on Dr. Bassett's findings, the Office medical adviser agreed that appellant had an eight percent permanent impairment rating of his left upper extremity pursuant to of the A.M.A., *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than an eight percent permanent impairment for loss of use of his left upper extremity, for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the eight percent impairment already awarded.

The decision of the Office of Workers' Compensation Programs dated June 28, 2002 is hereby affirmed.

Dated, Washington, DC
January 22, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.